Agricultural Law Update

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INSIDE

IN FUTURE ISSUES

Injustice anywhere is a threat to justice everywhere.

— Martin Luther King Jr.

Reg. § 20.2032A-8(c)(2) struck down

In *Estate of Marvin F. Pullin v. Commissioner,* 84 T.C. No. 52 (May 1, 1985), the decedent owned interests in two parcels of land as a tenant in common, with no right of survivorship. The other tenants in common were neither the decedent's heirs nor devisees. The estate elected special use valuation under Internal Revenue Code (IRC) § 2032A.

IRC § 2032A(d)(2) requires everyone who has an interest in the property to sign an agreement to pay the recapture tax if the recapture tax is triggered by failing to meet the use requirements during the ten-year period after death. Regulation § 20.2032A-8(c)(2) requires the decedent's co-tenants to sign the agreement even though their interest in the property was not affected by the death of the decedent.

In *Pullin,* the decedent's co-tenants did not sign the agreement. Therefore, relying on Reg. § 20.2032A-8(c)(2), the commissioner asserted that the election was invalid.

The tax court disagreed. It held that IRC § 2032A(d)(2) requires the signature of only those who receive an interest in the interest the decedent owned. The court further held that since Reg. § 20.2032A-8(c)(2) is an interpretive regulation rather than a legislative regulation, it is invalid to the extent it is in conflict with the court's interpretation of IRC § 2032A(d)(2).

— Philip E. Harris

Truth-in-Lending Act — agricultural purposes exemption

The Truth-in-Lending Act, 15 U.S.C. §§ 1601-1614, is designed to provide consumer protection by mandating, *inter alia,* that creditors comply with certain disclosure requirements. Protection for incorporated borrowers, farm or non-farm, was never intended. The disclosure requirements apply to only consumer credit transactions "in which the party to whom credit is offered or extended is a *natural person,* and the money, property or services which are the subject of the transactions are primarily for personal, family or household purposes." 15 U.S.C. § 1602(h). Until Oct. 1, 1982, § 1602(h) also spoke of "agricultural purposes" as giving rise to consumer credit transactions. However, from Oct. 28, 1974 to Oct. 1, 1982, now repealed 15 U.S.C. § 1603(5) exempted creditors who made loans to natural persons primarily for agricultural purposes if the amount financed exceeded $25,000. For a discussion of the application of § 1603(5) prior to its repeal, see *Ruminant Nitrogen Products v. Zittel,* 433 N.Y.S.2d 644, 78 A.D.2d 766 (1980). See also *Kurkowski v. Federal Land Bank of Omaha,* 750 F.2d 723 (8th Cir. 1984) (two loans made for agricultural purposes prior to Oct. 1, 1982 were exempt under § 1603(5), as both exceeded the $25,000 threshold).

In reviewing the $25,000 threshold, a congressional committee concluded that the protection provided to those borrowing $25,000 or less was unnecessary and added needless complexity. All agricultural credit, according to the committee, is essentially commercial in nature. S. Rep. No. 368, 96th Cong., 2d Sess. 24, *reprinted in* 1978 U.S. Code Cong. & Ad. News 259. Accordingly, § 1603(5) was repealed by Pub. L. 96-221 and replaced with a sweeping "agricultural purposes" exemption. At the same time, "agricultural purposes" was removed from the definition at 15 U.S.C. § 1602(h).

The current "agricultural purposes" exemption appears at § 1603(1), as amended, where the following are specifically exempted:

> Credit transactions involving extensions of credit primarily for business, commercial or *agricultural purposes,* or to the government or government agencies or instrumentalities, or to organizations. [Emphasis added]

The exemption for credit transactions primarily for agricultural purposes applies to loans consummated on or after Oct. 1, 1982, regardless of the amount of credit extended. "Agricultural purposes" is defined in § 1602(s) as including:

> ***the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propogates or nurtures those agricultural products, including but not limited to, the acquisition of farmland, real property with farm residence and personal property and services used primarily in farming.

(continued on next page)

In *Bowling v. Block*, 602 F.Supp. 667 (S.D. Ohio 1985), plaintiffs suffered dismissal of their complaint against Farm Credit System (FCS) banks and certain other defendants as the only transactions alleged appeared to fall within the "agricultural purposes" exemption. The court did note by way of dicta that FCS rural housing loans may well be consumer transactions.

If it is uncertain whether credit being extended to a non-corporate borrower is for "agricultural purposes," the casual finance exemption may be pertinent. This is not an express exemption, but is implied from the definitional provisions of the Act. The casual finance exemption applies to situations involving a lender who is not a "creditor." Section 1602(f) of the Act defines "creditor" as one who "regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required." See also 12 C.F.R. § 226.1(c). Therefore, if a lender is not involved in regular credit extension activities, the provisions of the Truth-in-Lending Act are not intended to apply.

For an interesting footnote to this report, see *Dougherty v. Hoolihan, Neils and Boland Ltd.*, 531 F.Supp. 717 (D. Minn. 1982), in which a firm of attorneys was held to have extended consumer credit to a farmer when taking a note and mortgage to secure fees in a case involving alleged felony theft of pigs and other "farm" matters.

— David W. Pryor

Agricultural Law Update

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UCC vs. branding law — distinguished

Moffat County State Bank vs. Producers Livestock Marketing Assoc., 598 F.Supp. 1562 (D. Colo. 1984), deals with yet another conflict between the Uniform Commercial Code (UCC) and specific statutory regulation of livestock sales. (See the discussion of *Cugnini v. Reynolds*, 687 P.2d 962 (Colo. 1984), in January 1985 *Agricultural Law Update*.

In *Moffat*, ostensibly in partial reliance upon *Cugnini*, the court found that the Colorado livestock branding and bill of sale statutes neither supplement nor supercede Article 9 of the UCC. This finding was the cornerstone of one of the court's holdings: that plaintiff bank had perfected its security interest in certain cattle sold on behalf of debtor by defendant, a livestock sales barn. The debtor, a rancher, received the sale proceeds and failed to remit them to the bank.

Plaintiff bank attempted to recover the proceeds from the sales barn pursuant to its security interest. On motion for summary judgment, the bank relied upon the holding in *Colorado Bank & Trust vs. Western Slope*, 539 P.2d 501, 504, that:

> An auction company that sells property in behalf of another...and the purchaser thereof, are each liable to the holder of the security interest for the fair value of the property sold, regardless of whether the auction company purchaser had actual knowledge...

Defendant sales barn argued that: (1) the description of the collateral in the security agreement did not meet the more detailed requirements for description in Colorado's livestock bill of sale law; and (2) plaintiff bank should have been required to execute a bill of sale for the livestock and to take an assignment of the seller's brand in order to perfect its security interest.

As to the first argument, the court found that the description requirements for the respective instruments are in fact different, but that since the instruments serve different purposes, the more detailed requirements of one scheme do not have relevance to the other. As to the second argument, the court, in the view of this writer simply said that the creation of a security interest is not a sale, and therefore, the bank's security interest was perfected without employing documents of sale.

However, the case was resolved in favor of defendant sales barn on the basis of the bank's previous course of conduct, which permitted owners of livestock subject to its security interest to deal with them as they pleased, and upon the stipulation of the bank that, had the seller-debtor brought the proceeds of the sale to the bank within a few days of sale, it would not have considered him in breach of his security agreement.

The somewhat alarming implication of this case is that though the seller and the sales barn had fully complied with the Colorado livestock bill of sale law and branding inspection, and though the barn apparently had relied upon the certificate of the state branding inspector, the court would not permit the sales barn to use these facts as grounds to escape liability to the secured creditor.

What is encouraging is that a sympathetic court took the opportunity to discuss at length alternative methods of dealing with secured livestock, even going so far as to deliver the following admonition:

> ...the Ohio legislation illustrates that the Colorado Legislature holds the solution to the problem...Until the Legislature acts, the courts will continually be placed in the position of choosing between two innocent parties on the basis of such ill-defined and difficult-to-apply distinctions...

In Ohio, according to the court, a buyer of farm products in the ordinary course of business takes free of a perfected security interest unless the secured party, before the sale, sends to the buyer a written notice claiming a security interest in the collateral.

In short, the message delivered by the court was, "The tension in the law...arises because the UCC's treatment of security interests in livestock does not reflect the actual practice in the trade." Currigan J.

— Bruce McMillen

Criminal conversion actions — FmHA

Criminal actions against Farmers Home Administration (FmHA) borrowers accused of selling or transferring collateral for FmHA loans continue. A conviction under 18 U.S.C. § 658 was affirmed in *United States v. Lott*, 751 F.2d 717 (4th Cir. 1985), in the face of an argument that there were facts suggesting that FmHA officials acquiesced in the sale of crops.

— John H. Davidson

The 1985 Farm Bill debate — Senate developments

by R. Charles Culver

Since the early introductions of two prominent farm bill proposals in the Senate (S.501, Helms by request of the administration and S.616, Helms), there has been a swarm of farm bill proposals dropped in the hopper, seven on May 1, 1985 alone. These bills run the gamut of political and policy expression, many with identical counterparts in the House of Representatives.

Much has already been written on S.501, S.616 and S.908 (McConnell, five co-sponsors), the Farm Bureau-supported bill, and this analysis will exclude these bills except for comparison purposes. *(Agricultural Law Update,* April 1985). Currently, S.501 and S.616 are undergoing Senate mark-up, although Senate observers concede S.501 is a dead bill. State Farm Bureaus across the country are actively lobbying on behalf of S.908 in hopes of pressuring Sen. Helms to include the bill for mark-up. Administration officials privately admit S.908 is the administration's backup proposal.

S.250, Sen. Pressler, Jan. 22, 1985
A wheat, feed grains and wool bill for the years 1986 through 1990, S.250 will target assistance through graduated deficiency payments based on production and through capping non-recourse support loans at $200,000. For wheat, the target price will be $4.48 for the first 7,520 bushels, $4.33 for production between 7,520 and 15,000 bushels and $4.18 for production from between 15,000 and 22,500 bushels. All production above 22,500 bushels will not be eligible for deficiency payments.

As for the loan, wheat will be supported at $3.30 per bushel, subject to reductions at the Secretary of Agriculture's discretion, although the loan cannot dip below $3. Wheat production is proposed to be controlled through set asides as determined necessary by the calculating of a national program acreage.

The price and income support provisions for feed grains are essentially the same as those for wheat. Corn is proposed to be supported at $2.55 per bushel, with discretionary authority with the secretary to lower supports up to 10% a year, provided supports do not dip below $2. Deficiency payments will be $3.13 for the first 10,000 bushels, $2.98 for the second 10,000 and $2.83 for the next. Any production over 30,000 bushels will not be eligible for deficiency payments. For both wheat and feed grains, if the secretary reduces the price support loans, he must compensate farmers for the potential loss of income by raising target prices.

S.250 extends the 1954 Wool Act through 1990, it includes sodbuster and soil bank provisions and it calls upon the president, in a Senate resolution, to increase exports. S.250 does not include other omnibus farm bill titles such as rice, cotton, soybeans, sugar, agricultural credit and domestic food assistance. The main focus of the bill is to reduce government costs for commodity programs. Soil and water conservation are strongly supported in the bill while the export title is weak. However, Sen. Pressler, in introducing his bill, claimed that the greater market orientation of S.250 will spur additional exports.

S.843, Sen. Cochran (Andrews), April 3, 1985
Largely an export bill, S.843 includes most program commodities except wool, mohair and dairy. Current program provisions for rice, cotton, feed grains, wheat and soybeans are essentially extended. Price supports are to be determined by using 85% of a three-year market average although for the years 1986 and 1987, the minimums set by law in the 1981 farm bill will be maintained. (Rice will be 8.14 per cwt.) Target prices for the program crops will be calculated at 130% of the average market price, although, like the support loans, for 1986 and 1987, current target prices are extended.

S.843 includes provisions for export payment-in-kind (PIK), for expanding Commodity Credit Corp. (CCC) credit authority and for making bonus commodities available to those countries not eligible for credit assistance. The peanut and sugar programs have been extended and honey supports are proposed to be based on 85% of the market average. S.843 maintains the payment limitation at $50,000. Many of the export provisions were picked up in Sen. Cochran's later bill, S.1040.

S.1036, Sen. Heflin, May 1, 1985
Entitled the Southern Agricultural Act of 1985, S.1036 is a peanuts and upland cotton bill for the years 1986 through 1989. With the attitude of, "if it ain't broke, don't fix it," Sen. Heflin introduced a bill that includes only cosmetic changes in the current cotton program and minor changes in the peanut program.

Target prices for cotton will remain at the current level of 81 cents a pound, although the secretary may raise it as circumstances warrant. The loan will be calculated as in current law, using market averages. The peanut support loan on quota peanuts is proposed to remain at the 1985 level of $559 per ton. The secretary may adjust the price upward if cost of production figures warrant. In a change over the current program, the support loan for additional peanuts shall be set by the secretary at a level that will ensure no losses to the CCC.

No other commodity is included in the bill, although there is a small provision to protect program eligibility of double-croppers/producers who primarily grow winter wheat. The bill has no export, conservation or food assistance titles. It assumes that the level of exports for cotton and peanuts are adequate, especially in comparison with other exported program crops.

S.1040, Sen. Cochran (Pryor), May 1, 1985
S.1040, an export bill incorporating the "marketing loan" concept developed by Wayne Boutwell of the National Council of Farmer Cooperatives, was introduced for emergency implementation in 1985. The marketing loan concept allows a farmer to take out a non-recourse support loan to be repaid at the loan rate or the current world market price, whichever is lower. The bill is designed to remove the support floor under program commodities in hopes of making exports more competitive, while providing protection on production returns. S.1040 includes an export PIK plan to counter unfair trade practices and to make exports more affordable, an expanded wheat and dairy donation program and more credit authority. Although S.1040 gained early momentum, the unilateral implementation of a $2 billion bonus incentive commodity export plan (BICEP) by the administration, at the urging of congressional leaders, has dampened prospects of passage.

S.1041, Sen. Boschwitz (Boren), May 1, 1985
Easily the most interesting bill, and one of the more controversial, S.1041 attempts to walk the balance of redressing our slumping share of the world export market while at the same time providing protection for farmer incomes. The bill, whose authority runs from 1986 through 1993, proposes the payment of income supports entitled "transition payments" to each farmer based on his historical production, up to a maximum of $63,000 for 1986 ($20,000 for dairy). Transition payments will be gradually reduced to 50% of the 1986 level by 1990.

R. Charles Culver is a member of the American Agricultural Law Association and reports on congressional activity to Agricultural Law Update. He hold the J.D. from the University of Arkansas School of Law and is a candidate for the LL.M. in agricultural law at that institution. Culver works as a legislative aide for Sen Dale Bumpers.

For the years 1991, 1992 and 1993, the continuation of transition payments will be at the secretary's discretion.

In a bid to spur exports, support loans are proposed to be dropped to "market-clearing" levels — $2.20 per bushel for wheat, $1.90 per bushel for corn, 50 cents per pound for cotton and $5.50 per cwt. for rice, to be adjusted upwards by no more than 5% or downwards no more than 10%, depending upon market conditions. There are no production control features. Farmers may plant all or nothing, with only market signals as a guide. Even a farmer who elects not to plant is eligible for transition payments.

Dairy support rates for manufactured milk will be $10.60 per cwt., to be reduced by 50 cents per cwt. each fiscal year in which purchases exceed 5 billion pounds. Supports may be raised by 50 cents per cwt. if purchases fall below 2 billion pounds, although the rate cannot exceed $10.60.

S.1041 maintains the grain reserve, provides for a "green dollar" (PIK) export program, includes a sodbuster provision and has a sugar title. S.1041 does not have a soybean, peanut or wool title. S.1041 does include the cargo preference expansion limitation bill language of S.721. The main criticism of the novel and upfront approach of S.1041 has been its projected cost.

S.1051, Sen. Zorinsky, (three co-sponsors), May 1, 1985

An omnibus farm bill which includes all titles except, interestingly, rice and cotton, S.1051 is a four-year bill whose main emphasis is the improvement of net farm income. For wheat, a two-priced system is proposed with a support loan of no lower than $3.55 per bushel and a target of no lower than $4.65 — if mandatory production controls are voted in a producer referendum, and a loan of no lower than $3.30 per bushel and a target of $4.38 if mandatory controls are defeated.

For corn, the support loan will be 85% of a three-year market average price, not to be less than $2.55 per bushel. Target prices will be based on production. The first 10,000 bushels will be eligible for deficiency payments of $3.18 per bushel, the next 10,000 $3.08, the next 10,000 $2.98 and $2.88 for that production between 30,000 and 40,000 bushels. No deficiency payments will be paid for production over 40,000 bushels.

S.1051 extends the current soybean, peanut, sugar, wool and mohair and tobacco programs another four years. The dairy program is also extended with supports of $11.60 per cwt. that may be lowered 5% each fiscal year if purchases exceed 5 billion pounds. The bill maintains the $50,000 payment limitation, includes sodbuster and soil bank provisions, provides a strong credit title, maintains the grain reserves and proposes to limit the expansion of cargo preference.

S.1083, Sen. Harkin, (three co-sponsors), May 7, 1985 (H.R.2383)

Commonly known as the AAM/Jim Hightower bill, the sponsors of S.1083 also sponsored S.1051 just six days earlier. S.1083 resurrects the parity concept for basing supports and it provides for mandatory production controls. S.1083 is a 14-year farm bill with prices to be supported at 70% of parity in 1986, to be increased 2% each year until supports hit the peak of 90% in 1996. Producers will be eligible to hold their loans for up to three years so as to induce more uncertainty in the markets. Support loans are targeted to smaller producers with those farmers with gross incomes over $200,000 a year having to set aside, incrementally, more land. Set asides are mandatory and all current program crops, plus soybeans, are included. Target prices will be eliminated.

A Farmer Disaster Reserve is created, requiring each producer to deposit 3% to 4% of each year's production. Disaster payments will be paid in commodities. S.1083 includes a strong credit title, sodbuster and soil bank provisions and export PIK. The dairy provision is little more than the expression of a concept. An emergency food reserve is established and meat imports are to be required to be labeled as imports. Meat imports will be prohibited until domestic meat prices reach parity. S.1083 also includes food assistance titles.

S.1083 has been criticized for its probable negative impact on exports and domestic food prices. Its strength lays in its immediate addressing of net farm income needs.

S.1119, Sen. Melcher (Burdick), May 9, 1985

Running the gamut, S.1119 is largely a reintroduction of the 1981 farm bill. Introduced with little fanfare, S.1119 would freeze program price and income supports at 1985 levels. Sen. Melcher, in support of the bill, believes that reducing price support rates will be detrimental to net farm income with little corresponding benefit to commodity exports. S.1119 includes a strong credit title, including a provision to help the Farm Credit System in its current troubles, and it calls for an expansion of charitable donations of CCC stocks. In expanding charitable donations, greater use will be made of U.S. non-profit relief agencies. S.1119 extends the soybean, peanut, sugar, wool and mohair programs for four years and dairy for two years. The bill also includes Senate Resolution 65 concerning soil conservation originally introduced by Sen. Bumpers.

Other bills worthy of further analysis are S.1050 introduced by Sen. Dixon; H.R.1912, Rep. Stenholm; H.R.2100, Rep de la Garza; H.R.2330, Rep. Dorgan, H.R.2536, Rep. Huckaby; and H.R.2555, Rep. Bently. Although early indications were that farm bill deliberations would proceed for the full year, and in fact, may surpass the statutary authority of the 1981 farm bill, recent momentum has been encouraging. S.616, because of its early introduction, and because it was introduced by the Chairman of the Senate Agriculture Committee, Jesse Helms, is still the front runner in the Senate.

Federal court requires guidelines for genetic engineering experiment

The Washington D.C. Circuit Court of Appeals has concluded that the National Institutes of Health (NIH) did not adequately assess environmental concerns before approving a University of California experiment involving the deliberate release of genetically-engineered organisms into the open environment. *See Foundation on Economic Trends v. Heckler,* Nos. 84-5314; 5419 (D.C. Cir. Feb. 27, 1985).

In the mid-1970s, scientists perfected techniques for modifying genetic material. Through a process of splitting and recombining a chemical substance known as DNA, researchers began to control the natural processes of micro-organism reproduction and growth. These new techniques were controversial, however, as some scientists raised questions concerning the potential risk of escape of hazardous organisms from research laboratories. The NIH developed limitations on the use of recombinant DNA research, and in 1976, adopted guidelines which expressly prohibited the deliberate release of recombinant DNA into the environment.

Recently, many scientists have concluded that the risks posed by such experiments were not as great as originally suggested. In addition, researchers have been demonstrating the great potential commercial value of genetic engineering. In response to these developments, revisions to the guidelines in 1978 gave the director of the NIH authority to grant exceptions to the rule barring any experimentation involving the deliberate release of DNA material into the environment. This change in the NIH guidelines was accompanied by environmental assessments which said little about the director's new waiver authority for deliberate release experiments. The director decided to withhold his decision on the need for an environmental impact statement until individual cases provided a firmer b

for such evaluation.

On June 1, 1983, the director gave approval to an experiment by researchers at the University of California, Berkeley, involving the application of a genetically-altered bacteria to plots of potatoes, tomatoes and beans in northern California. The anticipated effect of the experiment is to make the plants on which the bacteria is placed more frost tolerant. The experiment was approved without the benefit of an environmental impact statement or assessment document.

In September 1983, three environmental groups and two individuals filed suit, asserting that NIH had not complied with the requirements of the National Environmental Policy Act (NEPA). They sought to enjoin both the University of California experiment and NIH approval of all other deliberate release experiments pending the preparation of appropriate environmental impact statements. The district court held that these plaintiffs are likely to prevail in showing that NIH's environmental assessment of the University of California experiment was inadequate, thereby justifying injunctive relief prohibiting the University of California's deliberate release experiment until an appropriate environmental assessment could be completed. The district court also found that the plaintiffs are likely to prevail in showing that NIH should complete a "programmatic" impact statement, and, in effect, enjoined NIH from approving all other deliberate release experiments.

The federal Court of Appeals panel upheld the district court's order concerning the California experiment, concluding that the NIH failed to adequately assess the possibility of dispersion of recombinant-DNA-containing organisms. The court noted that dangerous organisms containing recombined DNA might be dispersed into the environment, find a suitable ecological niche for their own reproduction, then multiply and spread throughout the environment. The court concluded that while there is only a small possibility that damage could occur, the damage that could occur is great. The court ordered the NIH to seriously evaluate the risk that emigration of such organisms from the test site will create ecological disruption.

The Court of Appeals decided to vacate the injunction prohibiting NIH from approving all other deliberate release experiments pending the completion of a "programmatic" environmental impact statement, however. Unlike a site-specific assessment, the "programmatic" environmental impact statement addresses the broad environmental consequences of a wide-ranging federal program. The district court had concluded that because NIH will be receiving numerous proposals for deliberate release of genetically-engineered organisms, NEPA requires a "programmatic" study of the important issues generally associated with deliberate release experimentation. But the Court of Appeals decided that this conclusion may be premature, particularly if NIH gives adequate environmental consideration to each individual deliberate release experiment. The appellate court nevertheless urged the NIH to at least consider whether a programmatic environmental impact statement is required, and cautioned that if it does not do so, its approval of individual experiments may violate "established principles of reasoned decision-making."

The NIH has responded to date with a notice in the Federal Register announcing the completion of an "Environmental Assessment and Finding of No Significant Impact" for the California experiment. See 50 Fed. Reg. 14794-14796 (1985). The "Environmental Assessment," in effect, reaffirms the original decision by NIH that a formal environmental impact statement is not required by NEPA for this project. The Federal Register notice also solicited comments on the need for a "programmatic" environmental impact statement for NIH review of future deliberate release experiments. The comment period elosed May 15.

— David A. Myers

STATE ROUNDUP

ALABAMA. Constitutional Amendments. In a special election held May 14, 1985, the voters of Alabama approved the adoption of three state constitutional amendments that concern agriculture and natural resources. The first creates a permanent trust fund (the Alabama Trust Fund) funded by monies derived from the sale or lease of off-shore oil and gas rights owned by the state. The interest generated by the trust will flow to the state treasury. The rationale for the creation of this trust is to spread out, over time, the benefits of the gas and oil windfall and prevent the legislature from going on a spending spree.

The second amendment provides for the creation of a legislatively-appointed commission to provide cost-sharing awards or grant programs for projects and practices to improve soil conservation, water quality and reforestation of Alabama lands.

The third amendment allows state cattle producers to levy upon themselves by referendum, assessments or fees to be used to finance promotion, research and educational programs related to the Alabama cattle industry. This amendment replaces a 1961 amendment that restricted assessments to 10 cents per head, allowed reimbursements of fees to dissatisfied cattlemen and other legislative interference and oversight of promotion associations of cattlemen.

— Patricia A. Conover

IOWA. "Farmer as Merchant." In *Bauer v. Curran*, 360 N.W.2d 88 (Iowa 1984), the purchaser of stock cows from a farmer who had leased them was sued by the lessor on a conversion claim. The lessor's attempt to reclaim the cattle focused on the defendant-purchaser's claim that the farmer-lessee was a merchant. If the farmer-lessee was a merchant under section 544.2403(2) of the Iowa Code [U.C.C. § 2-403(2)], the purchaser obtained title to the cattle if purchaser was a buyer in the ordinary course. Section 544.2403(2) provides:

> Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entrustor to a buyer in ordinary course of business.

The district court ruled that the issue of whether a farmer is a merchant is one of fact for the jury to decide, which it did in the negative in this case, making § 554.2403(2) inapplicable. The Iowa Supreme Court affirmed, ruling that whether a farmer is a merchant is generally a question of fact, unless "the facts are undisputed and reasonable minds could draw no different inferences from them." The court did note that given the proper facts, a farmer can be found to be a merchant.

— Neil D. Hamilton

PENNSYLVANIA. Oil and Gas Act, Act 223 of 1984. Among the provisions of this act are those that set specific restrictions on well location (Section 205) and a rebuttable presumption that a well operator is responsible for the pollution of a water supply that is within 1,000 feet of an oil or gas well where the pollution occurred within six months after the completion of drilling or alteration of such well. To rebut this presumption, a well operator must affirmatively prove one of five defenses, including pollution existing prior to drilling, location of the water supply, date of pollution, refusal to allow a predrilling survey and disputed cause of the pollution (Section 208). Effective date: April 19, 1985.

— John C. Becker

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Agricultural Law Update

AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

1984 Annual Meeting

Make your plans now for the 1985 meeting of the American Agricultural Law Association to be held at the Hyatt Regency Hotel, Columbus, Ohio, October 3 and 4. Join your peers for two days of information and discussion. Mark your calendar!

State Reporters

In the March 1985 issue, *Agricultural Law Update* instituted a new column, the "State Roundup." We are pleased to recognize the state reporters that have been appointed thus far. **ALABAMA**, Patricia Conover; **ALASKA**, Jan Marie Miller; **ARIZONA**, Douglas C. Nelson; **ARKANSAS**, Kim Williamson Tucker; **CALIFORNIA**, Kenneth J. Fransen; **FLORIDA**, Michael Minton; **GEORGIA**, Terence J. Centner; **ILLINOIS**, Donald L. Uchtmann; **INDIANA**, Gerald Harrison; **IOWA**, Neil Hamilton; **KANSAS**, Keith G. Meyer; **KENTUCKY**, Kathleen J. Thompson; **MAINE**, Sarah Redfield; **MARYLAND**, Michael C. White; **MINNESOTA**, Gerald Torres; **MISSISSIPPI**, James H. Simpson; **MISSOURI**, Stephen F. Matthews; **NEW HAMPSHIRE**, Sarah Redfield; **NORTH CAROLINA**, Nathan M. Garren; **NORTH DAKOTA**, David M. Saxowsky, Allen C. Hoberg and Owen Anderson; **OHIO**, Paul L. Wright; **OKLAHOMA**, Drew Kershen; **OREGON**, Richard N. Belcher; **PENNSYLVANIA**, John C. Becker; **SOUTH CAROLINA**, Charles H. Cook; **TENNESSEE**, Howard B. Pickard; **TEXAS**, Richard Owens; **UTAH**, Matthew F. Hilton; **VERMONT**, William Rice; **VIRGINIA**, Leon Geyer; **WEST VIRGINIA**, Anthony Ferrise; **WISCONSIN**, Philip E. Harris. Reporters for the remaining states will be appointed shortly.

In Memoriam

It is with regret that we report the death on Wednesday, May 15, 1985, of James S. Wershow. Professor Wershow had a long and distinguished career in the field of agricultural law, and for the past ten years, served as professor of agricultural law in the Food and Resource Economics Department, University of Florida, Gainesville.